

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re: ZYPREXA PRODUCTS LIABILITY
LITIGATION

-----X
CHARLES CLARK,

Plaintiff,

-against-

ELI LILLY & COMPANY,

Defendant.

-----X
LOUIS F. ORTENZIO, JR., M.D., ET AL.,

Plaintiffs,

-against-

ELI LILLY & COMPANY,

Defendant.

-----X

JACK B. WEINSTEIN, Senior United States District Judge:

Defendant moves to exclude the testimony of Paul A. Fitzgerald, M.D.. The applicable rule is as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

MEMORANDUM &
ORDER APPROVING
EXPERT

04-MD-1596

06-CV-1600

07-CV-987

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAY 12 2009 ★

BROOKLYN OFFICE

Fed. R. Evid. 702; *see also Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-95 (1993).

Determining the admissibility of expert testimony is a role assigned to the district court. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). The admissibility of expert testimony in this multi-district litigation has been discussed extensively in connection with a previous round of summary judgment motions. *See Souther, et al. v. Eli Lilly & Company*, 489 F. Supp. 2d 230, 281-85 (E.D.N.Y. 2007).

Dr. Fitzgerald is fully qualified as an expert in the field in which he is proposed as a witness. His vitae includes the following:

MEDICAL BOARD CERTIFICATIONS

American Board of Internal Medicine
American Board of Internal Medicine in Endocrinology and
Metabolism

STATE MEDICAL LICENSURES

California (G31694) • Colorado (18127)

ACTIVE MEDICAL STAFF APPOINTMENT

University of California Medical Center, San Francisco •
Moffitt/Long Hospital

CURRENT ACADEMIC APPOINTMENTS & RESEARCH

CLINICAL PROFESSOR OF MEDICINE

Department of Medicine, Division of Endocrinology • University
of California, San Francisco

CONSULTING ATTENDING PHYSICIAN

Endocrinology Clinic, U.C.S.F. Medical Center
Inpatient Consultation, U.C.S.F. Medical Center

PRINCIPAL INVESTIGATOR

Phase II study of I-labeled metaiodobenzylguanidine (I-MIBG) for
treatment of metastatic or unresectable pheochromocytoma and
related tumors

Comprehensive Cancer Center
University of California, San Francisco

PROFESSIONAL MEMBERSHIPS

- The Endocrine Society
- American Diabetes Association (ADA)
- American Diabetes Association – Professional Section
- U.C.S.F. Diabetes Center – Full Member
- California Medical Association
- San Francisco Medical Society
- U.C.S.F. Alumni – Faculty Association
- U.C.S.F. Association of Clinical Faculty

EDUCATION

B.A. cum laude, Dartmouth College
Hanover, New Hampshire 1968

M.D., Jefferson Medical Center
Philadelphia, Pennsylvania 1972
with clinical training at
The Royal Infirmary, Glasgow, Scotland
Dartmouth-Mary Hitchcock Hospital, New Hampshire

POST DOCTORAL TRAINING

Residency: Internal Medicine
Presbyterian Medical Center and The Hospitals of the University
of Colorado Medical Center 1972-1975
with clinical training at
The University of Colorado Medical Center
Denver General Hospital
Denver Veteran's Administration Hospital
Fitzsimons Army Hospital

Fellowship: Endocrinology & Metabolism
University of California • Department of Medicine, Metabolic
Research Unit • San Francisco 1976-1978

SELECTED PAST POSITIONS

EXECUTIVE MEDICAL BOARD
THE MEDICAL CENTER AT THE UNIVERSITY OF
CALIFORNIA, SAN FRANCISCO

**ASSOCIATE MEDICAL DIRECTOR, DIABETES
TREATMENT CENTERS OF AMERICA
CHILDREN'S HOSPITAL (CALIFORNIA PACIFIC MEDICAL
CENTER), SAN FRANCISCO**

**CHAIRMAN, MEDICAL SUBCOMMITTEE -
EMERGENCY PREPAREDNESS COMMITTEE
CITY OF MILL VALLEY, CALIFORNIA**

**CLINICAL INITIATIVES COMMITTEE - THE
ENDOCRINE SOCIETY
BETHESDA, MARYLAND**

**PRESIDENT
AMERICAN DIABETES ASSOCIATION, LOCAL CHAPTER**

**MEDICAL TEXTBOOK REVIEWER
HARRISON'S PRINCIPLES OF INTERNAL MEDICINE**

**EXECUTIVE COUNCIL - THE ENDOCRINE SOCIETY
BETHESDA, MARYLAND**

**EMERGENCY AND CRITICAL CARE EXPERIENCE
OVER 10,000 HOURS IN EMERGENCY MEDICINE**

TEXTBOOK EDITOR/AUTHOR

Handbook of Clinical Endocrinology
First Edition 1986, Jones Medicine Publications, Greenbrae, CA
Second Edition 1992. Appleton & Lange, Norwalk, CT

AWARDS

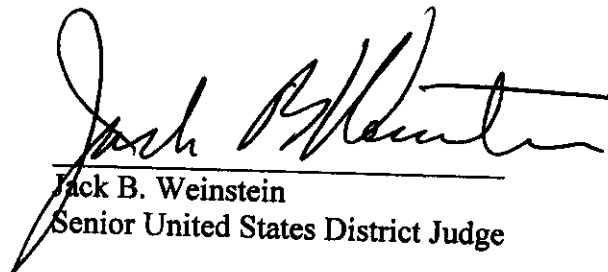
Charlotte Baer Memorial Clinical Faculty Award
University of California, San Francisco Medical Center, 1990
Presented by the Dean of the School of Medicine for "Outstanding
Contributions to U.C.S.F. and the Community"

The proposed expert has over seventy publications. In addition to his regular teaching he has delivered more than thirty important invited lectures.

This proposed expert has informed himself of the facts in the case. He has applied scientifically accepted theories and methods to the facts, producing an opinion which the jury could reasonably accept as scientifically valid.

The motion to exclude Dr. Fitzgerald as an expert witness is denied. An evidentiary hearing or argument is not required. The submitted papers suffice and support this decision.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: May 12, 2009
Brooklyn, New York